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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/551,731	10/03/2005	Karsten Bruninghaus	112740-1104	4322
29177 7590 06/11/2008 BELF., BOYD & LLOYD, LLP P.O. BOX 1135 CHICAGO, IL 60690				
EXAMINER KAO, JUTAI				
ART UNIT 2616		PAPER NUMBER		
MAIL DATE 06/11/2008		DELIVERY MODE PAPER		

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary

Application No.

10/551,731

Applicant(s)

BRUNINGHAUS ET AL.

Examiner

JUTAI KAO

Art Unit

2616

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☐ Responsive to communication(s) filed on ____.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 9-16 is/are pending in the application.
- 4a) Of the above claim(s) ____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) ____ is/are allowed.
- 6) ☒ Claim(s) 9-16 is/are rejected.
- 7) ☐ Claim(s) ____ is/are objected to.
- 8) ☐ Claim(s) ____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 03 October 2005 is/are: a) ☐ accepted or b) ☒ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☒ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. ____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO/SE/US)
Paper No(s)/Mail Date ____.
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date ____.
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: ____.

DETAILED ACTION

Priority

1. Acknowledgment is made of applicant's claim for foreign priority based on an application filed in Germany on 04/02/2003. It is noted, however, that applicant has not filed a certified copy of the foreign application as required by 35 U.S.C. 119(b).

Drawings

1. The drawings are objected to under 37 CFR 1.83(a). The drawings must show every feature of the invention specified in the claims. Therefore, the claim limitations claimed in claims 9-16 regarding the actual steps of the method must be shown or the feature(s) canceled from the claim(s). No new matter should be entered.

Corrected drawing sheets in compliance with 37 CFR 1.121(d) are required in reply to the Office action to avoid abandonment of the application. Any amended replacement drawing sheet should include all of the figures appearing on the immediate prior version of the sheet, even if only one figure is being amended. The figure or figure number of an amended drawing should not be labeled as "amended." If a drawing figure is to be canceled, the appropriate figure must be removed from the replacement sheet, and where necessary, the remaining figures must be renumbered and appropriate changes made to the brief description of the several views of the drawings for consistency. Additional replacement sheets may be necessary to show the renumbering of the remaining figures. Each drawing sheet submitted after the filing date of an application must be labeled in the top margin as either "Replacement Sheet" or "New

Sheet" pursuant to 37 CFR 1.121(d). If the changes are not accepted by the examiner, the applicant will be notified and informed of any required corrective action in the next Office action. The objection to the drawings will not be held in abeyance.

Claim Objections

2. Claims 10 and 13 are objected to because of the following informalities: unclear limitation. The claims recite the limitation of the result of the determination being positive or negative. It could be understood that the claim is meant to address determining whether there is free capacity available. However, the claim language by itself is unclear. Appropriate correction is required.

Claim Rejections - 35 USC § 112

3. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

4. Claim 12 is rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

5. Claim 12 recites the limitation "the second stations" in part b of the claim. There is insufficient antecedent basis for this limitation in the claim.

Claim Rejections - 35 USC § 103

6. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

7. This application currently names joint inventors. In considering patentability of the claims under 35 U.S.C. 103(a), the examiner presumes that the subject matter of the various claims was commonly owned at the time any inventions covered therein were made absent any evidence to the contrary. Applicant is advised of the obligation under 37 CFR 1.56 to point out the inventor and invention dates of each claim that was not commonly owned at the time a later invention was made in order for the examiner to consider the applicability of 35 U.S.C. 103(c) and potential 35 U.S.C. 102(e), (f) or (g) prior art under 35 U.S.C. 103(a).

8. Claim 9-11 are rejected under 35 U.S.C. 103(a) as being unpatentable over Pertain (US 2002/0181394) in view of Aalto (US 2003/0182430) and Basso (US 6,690,678).

Pertain discloses a bandwidth broker for cellular radio access networks including the following features.

Regarding claim 9, a method for controlling the transmission of data between at least two stations over a transmission medium (see fig. 4), each station including data links for applications with assigned priorities and parameters identifying a quality of service (see block 202 in Fig. 4, wherein QoS is queried), said method comprising the

steps of: establishing a new data link in a first station having an assigned priority (see Fig. 4, application prepares to setup the call step 201 and application queries...with...QoS step 202); assigning the data link to a first application (see application completes...call setup step 204 in Fig. 4; or see "traffic channel is established" recited in paragraph [0060]); determining a function of the available free channel capacity of the transmission medium, together with the occupancy of the transmission medium by existing data links (see "notifies application whether link is congested or not" step 203 in Fig. 4); restricting the new data link according to the determined function and the assigned priority of the first application as compared to existing priorities (see application completes or aborts call setup step 204 in Fig. 4).

Regarding claim 10, wherein during the establishment of the new data link, the first station determines whether the measure of the available free channel capacity corresponds to a measure of the necessary channel capacity given by the parameter of the first application and if the result of the determination is positive, the data link is established (see "...determine if bandwidth is available that satisfies the parameters requested by the MS" recited in paragraph [0060]), and if the result of the determination is negative the establishment of the data link is suspended, at least temporarily (see "If the bandwidth is not available, then the traffic channel establishment procedure ends" as shown in paragraph [0060]).

Pertain does not explicitly disclose the following features: regarding claim 9, wherein the function of the occupancy of the transmission medium by existing links is determined (Pertain only determines whether the link is congested); and restricting the

new data link based on assigned priorities; regarding claim 10, at least part of any data traffic which is assigned to applications with lower priority than the priority of the first application is considered; regarding claim 11, wherein the channel capacity is regarded as free up to the point where a threshold is reached, with this threshold corresponding to a relative fraction of the data traffic which is assigned to application with a lower priority.

Aalto discloses an adaptation of transmission capacity method including the following features.

Regarding claim 9, wherein the function of the occupancy of the transmission medium by existing links is determined (see "When a new connection is to be established...compares the transmission capacity needed for the connection with the ...transmission capacity...If the transmission capacity available is sufficient..." recited in paragraph [0024]; where in the available transmission capacity is a function of the occupancy of the transmission medium by existing data links).

Basso discloses a method for dynamically adjusting the bandwidth of a continuous bit rate virtual path connection according to the network load including the following features.

Regarding claim 9, the method comprises the step of restricting the new data link based on assigned priorities (see "...to make sure that there is always bandwidth available to accept the establishment of new voice connections...reduction of the bandwidth allocated to the CBR VPC..." recited in column 14, lines 40-43).

Regarding claim 10, at least part of any data traffic which is assigned to applications with lower priority than the priority of the first application is considered, in the context of the determination step, to be free channel capacity, (see “accept the establishment of new voice connection...reduction of the bandwidth allocated to the CBR VPC” recited in column 14, lines 40-43).

Regarding claim 11, wherein the channel capacity is regarded as free up to the point where a threshold is reached, with this threshold corresponding to a relative fraction of the data traffic which is assigned to application with a lower priority (see “accept the establishment of new voice connection...reduction of the bandwidth allocated to the CBR VPC” recited in column 14, lines 40-43; that is, bandwidth allocated to the CBR VPC, of the lower priority level, can be used for the connection of the new voice connection of the higher level, and is therefore considered free).

It would have been obvious to one of the ordinary skill in the art at the time of the invention to modify the system of Pertain using features, as taught by Aalto and Basso, in order to allow application of higher priority level to establish connections over those of lower priority level.

Allowable Subject Matter

9. Claims 12-16 would be allowable if rewritten to overcome the rejection(s) under 35 U.S.C. 112, 2nd paragraph, set forth in this Office action and to include all of the limitations of the base claim and any intervening claims.

Conclusion

Any inquiry concerning this communication or earlier communications from the examiner should be directed to JUTAI KAO whose telephone number is (571)272-9719. The examiner can normally be reached on Monday ~Friday 7:30 AM ~5:00 PM EST.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Kwang Yao can be reached on (571)272-3182. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

Ju-Tai Kao

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